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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,136	03/30/2001	Vincent T. Kozyrski	6611-01	8251
50811 7590 12/18/2006 O'SHEA, GETZ & KOSAKOWSKI, P.C. 1500 MAIN ST. SUITE 912 SPRINGFIELD, MA 01115			EXAMINER PRONE, JASON D	
			ART UNIT	PAPER NUMBER
			3724	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/18/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/822,136	<b>Applicant(s)</b> KOZYRSKI ET AL.	
	<b>Examiner</b> Jason Prone	<b>Art Unit</b> 3724	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 33 and 35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33 and 35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Appendix A</u>                         |

## **DETAILED ACTION**

### ***Drawings***

1. Applicant included a "Replacement Sheet" set of drawing in the response received 30 November 2006. However, it is unclear why this "Replacement Sheet" was submitted.

### ***Claim Objections***

2. Claims 33 and 35 are objected to because of the following informalities: In claim 33, the phrase "follow unguided multi-directional patterns" is not correct. If something is following a pattern it is guided. Also, this phrase only states that the blade follows the pattern and not that it cuts along the pattern. Any handheld object including non-cutting objects can follow a pattern. In claim 35, the phrase "the cutting blade to be manually maneuvered in a directionally unrestricted manner" does not disclose that the blade cuts along this maneuver.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 33 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Belcourt (4,733,472) See Appendix A for examiner added reference numerals.

In regards to claims 33 and 35, Belcourt discloses the same invention including a hand-held rotary cutter for cutting a thin sheet material (Column 1 lines 5-15), a circular cutting blade (48) having an axis (A), an axial centerline perpendicular to the axis (CL), a diameter (Column 3 lines 5-8), a maximum thickness extending between a first and second lateral side (Column 3 lines 8-10), a cutting edge (41) defined by a first edge surface extending between the first lateral side and the second edge surface (42) and a second edge surface extending between the second lateral side and the first edge surface (43), the cutting edge is symmetrical about the axial centerline in a cross-sectional plane extending perpendicularly between the first and second lateral side surfaces and through the axis (41, the entire blade may not be symmetrical but the circular cutting edge is), the cutting edge includes an edge angle defined by the first and second edge surfaces that is not less than  $40^\circ$  and not greater than  $50^\circ$  ( $D+C=45^\circ$ ), the diameter of the cutting blade is not greater than 15 times the maximum thickness (Column 3 lines 5-8); and a handle having a hand grip portion (Column 1 lines 5-15, clearly states the "the blade is adaptable for use on most commercially available can openers" and "manual". It is inherent that a handle with a gripping portion would be present in a manual can opener) and an axel on which the blade is pivotally mounted to rotate about it axis (32), the cutting blade and the manner in which it is mounted on the handle is capable of following unguided multi-directional selectively chosen patterns (Fig. 4), and the cutting blade is capable be manually maneuvers in a directionally unrestricted manner across a thin sheet material (Fig. 4).

It is noted that then intended use of a can opener is not the only use for the tool. A traditional can opener blade could be held in an unconventional manner and slice a piece of paper. For example, using the Liebscher reference, the handles may be pivoted so far that they form a substantial straight line. This open position will expose the can opener blade. If the user wanted he/she could cut the sheet of paper. This method of use may not be taught but the can opener is still perfectly capable of performing the task. It also noted that the Richter (5,758,426) teaches a blade angle with 45° and an entire blade that is symmetrical along the claimed axis.

### ***Response to Arguments***

5. Applicant's arguments filed 30 November 2006 have been fully considered but they are not persuasive. It is once again noted that the cutting edge formed by applicant's items 34 and 36 and Belcourt's 42 and 43 is a single point extended around the axis. This single point extended out about the axis would form a perfect circle that is clearly symmetrical. With respect to Appendix A, CL travels through the single point and this point would be symmetrical about CL even though the two sides creating the point are not. All that is claimed is the cutting edge is symmetrical not the first and second edge surfaces. If applicant claimed that the first and second edge surfaces where symmetrical, it would overcome the rejection to Belcourt. The claim states that the "a second edge surface extending between the second lateral side and the first edge surface". The claim does not disclose a specific shape of second edge surface or that the second edge surface contacts the lateral side only that it extends between the second lateral side and the first edge surface. 43 clearly extends between the 42 and

46. Also since no shape is disclosed, the second edge surface could be considered the combination of 43, 44, and 45 which does terminate at 46.

In response to applicant's argument that Belcourt does not follow unguided, multi-directional patterns across the thin sheet, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The can opener is capable of unguided, multi-directional patterns across the thin sheet (i.e. cutting 3 lines to form a triangle on a sheet of paper). It does not matter if performing the task is difficult only if the apparatus is capable of doing it.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is (571) 272-4513. The examiner can normally be reached on 7:00-4:30, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 14, 2006

A handwritten signature in black ink, appearing to read "Jason Prone". The signature is fluid and cursive, with the first name "Jason" and last name "Prone" clearly distinguishable.

Patent Examiner  
Jason Prone  
Art Unit 3724  
T.C. 3700

Appendix A

